

DRAFT GUIDELINE

EXPIRY REVIEWS

This guideline sets out the Tribunal's general approach to the expiry and review of orders and findings.¹ Under the *Special Import Measures Act*,² the Tribunal is responsible for issuing a notice of expiry of an order or finding, deciding if an expiry review is warranted, commencing an expiry review, and deciding if an order or finding should be rescinded or continued, with or without amendment.

There are three major phases in an expiry review. The first phase is the Tribunal's expiry proceeding to decide whether to conduct an expiry review. If the Tribunal decides to conduct a review, the second phase is the investigation by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the order or finding expires. Finally, if the Commissioner determines that such a likelihood exists, the third phase is the Tribunal's investigation into the likelihood of injury or retardation. Each of these phases is discussed below. To ensure an efficient expiry review process, the Tribunal and the Canada Customs and Revenue Agency (CCRA) will endeavour to coordinate the collection and exchange of information to the greatest extent possible. The final section of this guideline addresses other matters that may apply in an expiry review.

EXPIRY PROCEEDING

An expiry proceeding commences when the Tribunal issues a notice of expiry, at least 10 months prior to the expiry of the order or finding. The proceeding ends when the Tribunal makes a decision on whether an expiry review is warranted.

Notice of Expiry

The notice of expiry invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. The notice of expiry sets out the information described in Appendix 1.³ It also provides information on the expiry review process, including the role of the CCRA, if the Tribunal decides that an expiry review is warranted.

Submissions by Persons and Governments

Persons and governments should endeavour to base their submissions exclusively on public information; however, confidential information⁴ relevant to the issues before the Tribunal may be filed, if necessary.

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1. This guideline does not supplant the provisions of the *Special Import Measures Act* or those of any other relevant acts or regulations, such as the *Special Import Measures Regulations* and the *Canadian International Trade Tribunal Rules*. It is not a binding statement of how the Tribunal's discretion will be exercised in a particular situation; however, it is meant to provide guidance to both the Tribunal and its stakeholders when dealing with cases.
 2. Section 76.03.
 3. Rule 73.2 of the *Canadian International Trade Tribunal Rules*.
 4. Persons and governments should be aware that confidential information filed with the Tribunal will be transferred to the Commissioner if the Tribunal decides that a review is warranted. The Tribunal will indicate to the Commissioner that the information has been designated as confidential pursuant to subsection 46(1) of the *Canadian International Trade Tribunal Act*. The Commissioner will not disclose or allow the disclosure of the confidential information in that record. Parties wishing to use such information in the Commissioner's investigation shall make a request to the Tribunal. See the Tribunal's *Procedural Guidelines for the Designation and Use of Confidential Information in Canadian International Trade Tribunal Proceedings* available on the Tribunal's Web site at www.citt.gc.ca.

Where the Tribunal receives opposing submissions on whether a review is warranted, it will circulate all the submissions to each person or government that filed a submission with the Tribunal. Those persons and governments will then have one week to reply to the other submissions. These replies must be filed with the Tribunal and, if they are public, served on all persons and governments that made initial submissions for their information only. The Tribunal will circulate confidential submissions and replies to counsel who file a notice of representation on behalf of parties that filed a notice of participation, and a declaration and undertaking. Absent exceptional circumstances, the Tribunal will not accept any further submissions following these replies.

The Tribunal will not consider commencing an expiry review at the request of a person or government, unless the request is filed on or before the deadline specified in the notice of expiry.

Schedule for an Expiry Proceeding

The following table provides an indicative schedule of the events in an expiry proceeding.

Day	Event
1	Publication of notice of expiry
25	Receipt of submissions
26	Distribution of submissions (if required)
33	Receipt of replies
50	Publication of notice of review or decision not to review
65	Publication of reasons for decision not to review (if applicable)

Decision on Whether to Initiate a Review

On the 50th day of the expiry proceeding, based on the information submitted in response to the notice of expiry, the Tribunal will determine whether a review of the order or finding is warranted. If the Tribunal determines that a review of the order or finding is warranted, it will issue a notice of review and notify the Commissioner of its decision. The Tribunal will, at the same time, transfer to the Commissioner the administrative record of the expiry proceeding. If the Tribunal determines that a review is not warranted, it will issue an order to that effect. The reasons for its decision will be issued approximately 15 days following the order. The notice of review or the order not to review will be published in the *Canada Gazette*.

Notice of Review

The Tribunal's notice of review will set out the information described in Appendix 2. It will also briefly describe the functions of the Tribunal and those of the Commissioner in the expiry review. In this regard, the Tribunal's notice of review will include the schedule for the Commissioner's determination of the likelihood of a continuation or resumption of dumping or subsidizing, including the dates for replying to questionnaires and making submissions, as well as the date of the Commissioner's determination. The Secretary of the Tribunal will send the expiry review questionnaires to foreign producers and exporters, importers and domestic producers, replies to which are to be sent to the Commissioner. These replies will be

included with the information that the Commissioner will transfer to the Tribunal if he determines that there is a likelihood of continued or resumed dumping or subsidizing.

COMMISSIONER'S INVESTIGATION

The Commissioner will determine whether the expiry of the order or finding in respect of goods of a country or countries is likely to result in the continuation or resumption of the dumping or subsidizing of the goods. A CCRA guideline⁵ provides details on how persons and governments can participate in the investigation and the conditions under which access to public and confidential information or documents filed with the CCRA will be granted.

In making its determination on the likelihood of continued or resumed dumping or subsidizing, the Commissioner will have before him, in addition to other information, the replies to the expiry review questionnaires to foreign producers and exporters, importers and domestic producers.⁶ As already noted, this information will be included as part of the administrative record transferred by the Commissioner to the Tribunal, if he determines that there is a likelihood of continued or resumed dumping or subsidizing. The expiry review questionnaire to domestic producers will consist of two parts. The first will request information on market characteristics to be provided to the CCRA. The second part will request additional information that the Tribunal will require in making a determination respecting the likelihood of injury or retardation. The expiry review questionnaire will instruct domestic producers to submit the response to the second part of the questionnaire to the Tribunal, at a date specified in the Tribunal's notice of review, but only if the Commissioner determines that there is a likelihood of continued or resumed dumping or subsidizing with respect to some or all of the goods.

If the Commissioner determines that the expiry of the order or finding in respect of any goods is likely to result in continued or resumed dumping or subsidizing, the Commissioner will provide the Tribunal with the reasons for the determination, information relating to the enforcement of the Tribunal's order or finding and, in particular, to the extent available, the total volume and value of imports, the volume and value of the dumped or subsidized imports and undumped or unsubsidized imports, and any other information that has been taken into consideration by the Commissioner, including replies to the expiry review questionnaires.

If the Commissioner determines that the expiry of the order or finding in respect of any of the goods is unlikely to result in continued or resumed dumping or subsidizing, the Commissioner will provide the Tribunal with the reasons for the determination. The Tribunal will not consider those goods in its subsequent determination of the likelihood of injury and will issue an order rescinding the order or finding with respect to those goods.

Whatever the Commissioner's determination, he will notify all persons or governments that were notified by the Tribunal of the commencement of the expiry review, as well as any others that participated in the Commissioner's investigation.

5. [CCRA](#).

6. CCRA staff will consult with Tribunal staff when it prepares the questionnaires to ensure that the questionnaires generate the information required by the Tribunal for the expiry review. CCRA and Tribunal staff will also consult to establish comprehensive mailing lists for the expiry review questionnaires to be distributed by the Secretary, should the Tribunal decide that an expiry review is warranted.

TRIBUNAL'S INQUIRY

The Tribunal will continue the expiry review if the Commissioner determines that there is a likelihood of continued or resumed dumping or subsidizing with respect to any of the goods to which the order or finding applies. The Tribunal will then conduct its own inquiry to determine if the continued or resumed dumping or subsidizing is likely to result in injury or retardation.

In its inquiry, the Tribunal will use information provided to the CCRA in response to the expiry review questionnaires, and further information will be collected through separate questionnaires on market characteristics. Public and protected pre-hearing staff reports will be prepared and, along with the information forwarded by the Commissioner to the Tribunal and other information collected by the Tribunal, will be distributed to parties that file notices of participation. Parties will be given an opportunity to make submissions and to request further information from other parties. Following the distribution of the administrative record and the exchange of information, a public hearing will normally be held. Confidential information and documents will be provided to counsel who file a notice of representation on behalf of parties, and a declaration and undertaking.

Schedule for an Expiry Review

The following table provides an indicative schedule of the major events in an expiry review. Other dates (e.g. for issuing market characteristics or supplementary questionnaires and receiving questionnaire responses, submissions or requests for information by parties) will be determined on a case-by-case basis.

Days After Notice of Expiry Review	Event
0	Publication of notice of review, transfer of copy of Tribunal's administrative record to the Commissioner and issuance of the expiry review questionnaires Commencement of Commissioner's investigation
20	Receipt of notice of participation, notice of representation and declaration and undertaking
120	Notification of Commissioner's determination and transfer of information from the Commissioner Commencement of Tribunal's inquiry
160	Distribution of Tribunal exhibits (including staff report)
200	Commencement of public hearing
250	Publication of Tribunal's order with reasons

Tribunal's Determination Regarding Injury

In determining whether continued or resumed dumping or subsidizing is likely to result in injury or retardation, the Tribunal may take into account the factors set out in the *Special Import Measures Regulations*⁷ that are listed in Appendix 3.

If the Tribunal determines that the continued or resumed dumping or subsidizing is not likely to cause injury or retardation, the order or finding will be rescinded. If the Tribunal determines that the continued or resumed dumping or subsidizing is likely to cause injury or retardation, it will issue an order⁸ continuing the order or finding, with or without amendment.

OTHER MATTERS

Notices⁹

Persons or governments that filed notices of participation when submissions were made in the expiry proceeding need only confirm their notices of participation in any subsequent Tribunal proceeding in the expiry review. Similarly, counsel who filed a notice of representation and a declaration and undertaking in the expiry proceeding need only confirm them in the subsequent expiry review.

Access to the Tribunal's Public Record

Parties to an expiry review will receive a copy of the public record of the proceeding from the Tribunal. Others may have access to the public record of an expiry proceeding, an expiry review or a prior related Tribunal proceeding during normal business hours, on the premises of the Tribunal.

Copying of the public record, or any part of it, will be at the expense of the person requesting copies.

Access to the Protected Record of a Prior Related Tribunal Proceeding

Counsel for persons or governments making submissions in an expiry proceeding and counsel for parties participating in an expiry review, including the phase in an expiry review relating to the Commissioner's determination of the likelihood of continued or resumed dumping or subsidizing, may have access to the protected record of a prior related Tribunal proceeding, subject to the following conditions:

- Persons or governments whose counsel require access to the protected record of a prior related Tribunal proceeding must file with the Tribunal a notice of participation.
- Counsel must file with the Tribunal a notice of representation and a declaration and undertaking.
- A request for access to the protected record of a prior related Tribunal proceeding must be made to the Secretary. Access to a protected record will only be permitted during normal business hours, on the premises of the Tribunal, or as otherwise specified by the Secretary.

7. Subsection 37.2(2).

8. The order expires five years after the date on which it was made, subject to any interim or expiry review.

9. Forms for filing notices will be available on the Tribunal's Web site at www.citt.gc.ca.

Placing Information from a Prior Related Proceeding on the Record of the Expiry Review

Persons, governments or parties may use information from the record of a prior related proceeding in an expiry proceeding or an expiry review, subject to the conditions outlined in Appendix 4. The Tribunal will place on the record of the expiry review the administrative record of the expiry proceeding including the public and protected pre-hearing staff reports from the prior related inquiry or the most recent review, whichever is applicable. The Tribunal will also include an index of the evidence and documents from that proceeding.¹⁰

Placing Confidential Information from a Prior Related Proceeding Before the Commissioner

Any party wanting to use or refer to confidential documents or materials that are contained in the protected record of a prior related proceeding in their submissions to the Commissioner and that have not otherwise been provided to the Commissioner shall make a request to the Tribunal to direct the Secretary to provide those documents or materials to the Commissioner. Where the Tribunal is of the view that the information contained in such documents and materials warrants providing them to the Commissioner and where the Tribunal is satisfied that the documents and materials will not knowingly be disclosed to any competitor or business rival of the person to whose business and affairs the documents or materials relate, the Tribunal shall so direct the Secretary.

Expiry Proceeding for Orders or Findings on Identical Goods and Goods that Closely Resemble Each Other

Where there are orders or findings with dates of expiry that are up to one year apart concerning identical goods, or goods which the Tribunal considers to closely resemble each other and where it deems it fair and efficient to do so, the Tribunal will:

- issue a single notice of expiry in respect of the various orders or findings inviting persons or governments to make submissions requesting or opposing the review of each order or finding;
- in its notice of expiry, invite the views of persons or governments on whether there are any reasons why the orders or findings should not be joined in a single review;
- make a separate decision as to whether a review of each order or finding is warranted; and
- if it decides to review one or more of the orders or findings, conduct a single expiry review, where the circumstances and considerations of fairness permit.

10. Counsel for parties can obtain access to the protected pre-hearing staff report of a prior related proceeding during the phase of the Commissioner's investigation by meeting the conditions set out in the previous section.

APPENDIX 1**INFORMATION IN TRIBUNAL'S NOTICE OF EXPIRY**

The Tribunal's notice of expiry will contain:¹¹

1. the date on which the order or finding will expire;
2. the date by which any written submissions must be filed by any person or government requesting or opposing the commencement of a review of the order or finding;
3. the number of copies of each written submission that must be filed;
4. instructions with respect to the filing of confidential information; and
5. the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the expiry may be obtained.

The notice will also include the following issues to be addressed in submissions to the Tribunal:¹²

1. the likelihood of continued or resumed dumping or subsidizing of the goods;
2. the likely volume and price ranges of dumped or subsidized imports if dumping or subsidizing were to continue or resume;
3. the domestic industry's recent performance, including trends in production, sales, market share and profits;
4. the likelihood of injury to the domestic industry if the order or finding were allowed to expire, having regard to the anticipated effects of a continuation or resumption of dumped or subsidized imports on the industry's future performance;
5. any other developments affecting, or likely to affect, the performance of the domestic industry;
6. changes in circumstances, domestically or internationally, including changes in the supply of or demand for the goods, and changes in trends in, and sources of, imports into Canada; and
7. any other matter that is relevant to the review.

11. See rule 73.1 of the *Canadian International Trade Tribunal Rules* for the official wording of these regulatory provisions.

12. See rule 73.2 of the *Canadian International Trade Tribunal Rules* for the official wording of these regulatory provisions.

APPENDIX 2**INFORMATION IN TRIBUNAL'S NOTICE OF REVIEW**

The Tribunal's notice of review will contain:¹³

1. the statutory authority for the review;
2. the subject matter of the review, together with any other details of the review that the Tribunal directs;
3. the date by which an interested party must file a notice of participation;
4. the date by which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking;
5. the date by which any written submissions must be filed;
6. the number of copies of each written submission that must be filed;
7. instructions with respect to the filing of confidential information;
8. the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the review may be obtained; and
9. the place and time fixed for commencement of a hearing in the review.

13. See subrule 71(1) of the *Canadian International Trade Tribunal Rules* for the official wording of these regulatory provisions.

APPENDIX 3

PRESCRIBED FACTORS IN DETERMINING THE LIKELIHOOD OF INJURY OR RETARDATION

The following factors are prescribed in the Tribunal's determination of the likelihood of injury or retardation resulting from continued or resumed dumping or subsidizing:¹⁴

1. the likely volume of the dumped or subsidized goods, if the order or finding is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods;
2. the likely prices of the dumped or subsidized goods, if the order or finding is allowed to expire and their effect on the prices of like goods, and, in particular, whether the dumping or subsidizing of goods is likely to significantly undercut or depress the prices of like goods, or suppress them by preventing increases in those prices that would likely have otherwise occurred;
3. the likely performance of the domestic industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits;
4. the likely performance of the foreign industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits;
5. the likely impact of the dumped or subsidized goods on the domestic industry, if the order or finding is allowed to expire, having regard to all relevant economic factors and indices, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital;
6. the potential for the foreign producers to produce the goods in facilities that are currently used to produce other goods;
7. the potential negative effects of the dumped or subsidized imports on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
8. evidence of the imposition of anti-dumping or countervailing measures by the competent authorities in a country other than Canada in respect of goods of the same description or in respect of similar goods;
9. any changes in market conditions, domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends in, and in sources of, imports into Canada; and
10. any other factors relevant in the circumstances.

14. See subsection 37.2(2) of the *Special Import Measures Regulations* for the official wording of these regulatory provisions.

APPENDIX 4**USING INFORMATION FROM A PRIOR RELATED TRIBUNAL PROCEEDING**

The following conditions apply when parties use information from the record of a prior related proceeding:

1. Any party filing with its submissions to the Tribunal, documents, materials and information from the public record of a prior related proceeding must identify them as such and provide their source, including the proceeding in which they originated.
2. Any reference, in the submissions of a party, to information in the public record of a prior related proceeding, or to information derived therefrom, must be identified as such and include the specific source of the information and the proceeding in which it originated.
3. Any party wanting to use or refer to documents or materials contained in the public record of a prior related proceeding, that are not otherwise filed by or with the Tribunal in the expiry proceeding or expiry review, shall advise the Tribunal and the other parties.
4. The Tribunal may request a party submitting or wanting to submit information from the public record of a prior related proceeding to seek leave of the Tribunal. This may occur where a party attempts to incorporate large portions of a prior related proceeding into its submissions.
5. Any party wanting to use or refer to confidential documents or materials contained in the protected record of a prior related proceeding, that are not otherwise filed by or with the Tribunal in the expiry proceeding or expiry review, shall make a request to the Tribunal to direct the Secretary to place such documents or materials on the record. Where the Tribunal is of the view that the information contained in such documents and materials warrants placing them on the record, the Tribunal will direct the Secretary to do so.